

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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THERESA MULLERY,

Plaintiff,

v.

JTM CAPITAL MANAGEMENT, LLC,

Defendant.

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18-CV-549-LJV-HKS  
DECISION AND ORDER

AMANDA PERRY,

Plaintiff,

v.

JTM CAPITAL MANAGEMENT, LLC,

Defendant.

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18-CV-566-LJV-HKS  
DECISION AND ORDER

In October 2017, the plaintiffs, Theresa Mullery and Amanda Perry, commenced separate but substantially similar actions in the United States District Court for the Northern District of Illinois. No. 18-CV-549, Docket Item 1; No. 18-CV-566, Docket Item 1. Both plaintiffs claim that the same defendant, JTM Capital Management, LLC (“JTM”), violated the Fair Debt Collection Practices Act (“FDCPA”). No. 18-CV-549, Docket Item 1; No. 18-CV-566, Docket Item 1. In May 2018, United States District Judge Robert W. Gettleman transferred the cases to this Court. No. 18-CV-549, Docket Item 24; No. 18-CV-566, Docket Item 23.

This Court then referred both cases to United States Magistrate Judge H. Kenneth Schroeder, Jr., for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). No.

18-CV-549, Docket Item 27; No. 18-CV-566, Docket Item 26. On June 18, 2021, the defendant moved for summary judgment in each case. No. 18-CV-549, Docket Item 91; No. 18-CV-566, Docket Item 88. That same day, the plaintiffs moved to amend their complaints to include allegations that the defendant violated two additional sections of the FDCPA, 15 U.S.C. §§ 1692e and 1692g. No. 18-CV-549, Docket Item 92; No. 18-CV-566, Docket Item 89. On July 2, 2021, the defendant responded, No. 18-CV-549, Docket Item 95; No. 18-CV-566, Docket Item 92; and on July 8, 2021, the plaintiffs replied, No. 18-CV-549, Docket Item 98; No. 18-CV-566, Docket Item 95. The plaintiffs also moved to stay the summary judgment deadline or, in the alternative, to extend the time to respond to the defendant's motions for summary judgment. No. 18-CV-549, Docket Items 93, 97, 101; No. 18-CV-566, Docket Items 90, 94, 98.

On September 9, 2021, Judge Schroeder issued a Report, Recommendation, and Order ("RR&O")<sup>1</sup> in each case, finding that (1) the plaintiffs' motions to amend their complaints should be granted; (2) the plaintiffs' motions to stay summary judgment or, in the alternative, to extend the deadline for responding to the defendant's motions for summary judgment should be granted; and (3) the defendant's motions for summary judgment should be denied without prejudice. No. 18-CV-549, Docket Item 103; No. 18-CV-566, Docket Item 100. The parties did not object to the RR&O,<sup>2</sup> and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

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<sup>1</sup> The RR&O is labelled as a "Decision and Order" but clearly makes recommendations, and so this Court refers to it as the RR&O.

<sup>2</sup> In fact, the parties have proceeded as if the RR&O already has been adopted. The plaintiffs filed amended complaints the day after the RR&O was issued, No. 18-CV-549, Docket Item 104; No. 18-CV-566, Docket Item 101; and on October 16, 2021, the

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Schroeder's RR&O. Based on that review and the absence of any objections, the Court accepts and adopts Judge Schroeder's recommendation to grant the plaintiffs' motions to amend their complaint and stay the summary judgment briefing deadlines and to deny the defendant's motions for summary judgment.

For the reasons stated above and in the RR&O, the plaintiffs' motions to amend their complaints, No. 18-CV-549, Docket Item 92; No. 18-CV-566, Docket Item 89, are GRANTED; the plaintiffs' motions to stay the deadline for motions for summary judgment, No. 18-CV-549, Docket Items 93, 97, 101; No. 18-CV-566, Docket Items 90, 94, 98, are GRANTED; and the defendant's motions for summary judgment, No. 18-CV-549, Docket Item 91; No. 18-CV-566, Docket Item 88, are DENIED without prejudice to the refiling of dispositive motions. The case is referred back to Judge Schroeder for further proceedings consistent with the referral orders of May 30, 2018, No. 18-CV-549, Docket Item 27; No. 18-CV-566, Docket Item 26.

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defendant answered, No. 18-CV-549, Docket Item 109; No. 18-CV-566, Docket Item 103.

SO ORDERED.

Dated: December 9, 2021  
Buffalo, New York

**/s/ Lawrence J. Vilardo**  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE